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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOSEPH LEE HAUGHAWOUT, MAURO DRESTI,
and PATRICK H. HAYES

Appeal 2007-3338
Application 10/758,820
Technology Center 2600

Decided: March 6, 2008

Before JOSEPH F. RUGGIERO, MAHSHID D. SAADAT,
and KARL D. EASTHOM, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellants appeal under 35 U.S.C. § 134(a) from a Final Rejection of claims 1-14, 29-40, 44, and 45, which are all of the claims pending in this application as claims 15-28 and 41-43 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

Appellants invented a system and method for using appliance power awareness during home appliance control by selecting a remote control command set (Spec. 1). In order to ensure that the appliance is in a known state when the program macro is executed, the claimed invention provides for a power monitor associated with the appliance which includes circuitry for determining a current power state of the appliance (Spec. 5).

Claim 1, which is representative of the claims on appeal, reads as follows:

> 1. A system for setting up a control device to command the operations of an appliance, comprising:
>
> a power monitor associated with the appliance, the power monitor having circuitry for monitoring power supplied to the appliance to thereby determine a current power state of the appliance and a first wireless communication module; and
>
> the control device having a library of command code sets, a second wireless communication module for transmitting a command code selected from a command code set to the appliance, and a third wireless communication module for receiving a communication from the first wireless communication module of the power monitor;
>
> wherein the control device has setup mode programming for transmitting to the appliance via the second wireless communication module a command code from one of the command code sets and for receiving from the power monitor via the third wireless communication module a signal which indicates that the transmitted command code caused a change in the current power state of the appliance whereupon the command code set which includes the command code to which the appliance responded by changing power

states is selected for use in commanding the operations of the appliance.

The prior art applied in rejecting the claims on appeal is:

Yamamoto	US 5,097,249	Mar. 17, 1992
Kamon	US 5,726,645	Mar. 10, 1998
Ivie	US 5,815,086	Sep. 29, 1998
Chiloyan	US 6,008,735	Dec. 28, 1999
Nakazawa	US 6,297,746 B1	Oct. 2, 2001

Claims 1, 3, 5, 6, 8-10, 12-14, 29, 31, 33, 34, 36-38, 40, 44, and 45 stand rejected under 35 U.S.C. § 103(a) based upon the teachings of Kamon and Ivie.

Claims 2 and 30 stand rejected under 35 U.S.C. § 103(a) based upon the teachings of Kamon and Ivie in view of Nakazawa.

Claims 4 and 32 stand rejected under 35 U.S.C. § 103(a) based upon the teachings of Kamon and Ivie in view of Yamamoto.

Claims 7, 11, 35, and 39 stand rejected under 35 U.S.C. § 103(a) based upon the teachings of Kamon and Ivie in view of Chiloyan.

Rather than reiterate the opposing arguments, we refer to the Briefs and the Answer for the respective positions of Appellants and the Examiner. Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants could have made but did not make in the Briefs have not been considered and are deemed to be waived. See 37 C.F.R. § 41.37(c)(1)(vii).

We affirm.

ISSUE

The issue is whether Appellants have shown that the Examiner erred in rejecting the claims under 35 U.S.C. § 103(a). The issue specifically turns on whether one of ordinary skill in the art would have combined Kamon and Ivie to arrive at the claimed subject matter related to monitoring the power supplied to an appliance in connection with setting up a remote control.

PRINCIPLES OF LAW

To reach a conclusion of obviousness under section 103, the Examiner bears the burden of producing factual basis supported by teaching in a prior art reference or shown to be common knowledge of unquestionable demonstration. Our reviewing court requires this evidence in order to establish a prima facie case. *In re Piasecki*, 745 F.2d 1468, 1471-72 (Fed. Cir. 1984).

Furthermore, the test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. *See In re Kahn*, 441 F.3d 977, 987-988 (Fed. Cir. 2006), *In re Young*, 927 F.2d 588, 591 (Fed. Cir. 1991) and *In re Keller*, 642 F.2d 413, 425 (CCPA 1981).

"Section 103 forbids issuance of a patent when 'the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said

subject matter pertains.'" *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1734 (2007).

"The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *Leapfrog Enter., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1161 (Fed. Cir. 2007) (quoting *KSR*, 127 S. Ct. at 1739-40). "One of the ways in which a patent's subject matter can be proved obvious is by noting that there existed at the time of invention a known problem for which there was an obvious solution encompassed by the patent's claims." *KSR*, 127 S. Ct. at 1742.

ANALYSIS

Appellants do not dispute the teachings of Kamon with respect to the claimed elements such as a power monitor associated with the appliance, the control device having a library of command code sets, and setup mode programming for transmitting to the appliance and receiving a signal indicating a change in the current power state of the appliance. However, Appellants' contentions focus on whether the combination of Kamon and Ivie discloses, teaches, or suggests the desirability of monitoring the power supplied to an appliance in connection with automatically setting up a remote control (App. Br. 6).

Appellants specifically contend that Ivie only monitors the power supplied to the appliance and determines if the IR transmitter should proceed with transmitting a power toggle command and fails to provide for desirability of generating a signal that indicates a change in the power

current state of an appliance for any purpose (App. Br. 6-7). The Examiner responds that one of ordinary skill in the art would recognize that using the power monitor of Ivie in Kamon's system enables the appliance headphone plug to be used as intended while the appliance's power state is being determined (Ans. 10-11).

We agree with the Examiner's line of reasoning and find that, similar to Kamon, Ivie relates to controlling and programming appliances using instructions issued by an appliance automation controller (col. 2, ll. 57-61). Ivie determines the "power on" or "power off" state of an appliance by monitoring the power state of the appliance (col. 6, ll. 37-45), which in turn, determines the specific control or programming command for that state (col. 7, ll. 8-20; col. 8, ll. 34-51).

In fact, contrary to Appellants' argument (App. Br. 6), the power state of the appliance in Ivie is used for selecting the appropriate control command (col.2, ll. 57-61). As such, while power monitoring may have other applications, one of ordinary skill in the art would have recognized the benefits of using the current output in Ivie to monitor the appliance's power state for the purpose of controlling the appliance. In fact, whether the audio jack in Kamon can be used after the appliance power state is determined or whether the audio output works in case of setting the appliance to "mute" state does not diminish the teaching value of Ivie with respect to monitoring the current used by the appliance in order to determine its power state.

Additionally, Appellants contend that the combination of Kamon with Ivie would not have been obvious to one of ordinary skill in the art since no

evidence has been presented to demonstrate the benefits of combining the references (Reply Br. 2). Appellants further argue that the Examiner has not shown where either Kamon or Ivie identifies the power monitor of Ivie to be preferable over Kamon's (Reply Br. 3).

Again, we disagree with Appellants that a specific teaching in the references is the only basis for one of ordinary skill in the art to combine the references. As discussed above, using any power state monitoring system such as the power sensing device of Ivie for monitoring the power state of the appliance by monitoring the current would have been obvious since the combination produces predictable results. In other words, consistent with *KSR*, the power monitoring device of Ivie presents merely an obvious solution for the known problem of determining the power state of an appliance, as disclosed in Kamon.

For all of the previously discussed reasons, we simply find no error in the Examiner's position that using the power state monitoring device based on the current drawn by an appliance as taught by Ivie would be recognized by the skilled artisan as an obvious enhancement to the power state monitoring device of Kamon which is based on the audio output of the appliance. According to *Leapfrog*, when combination of familiar elements according to methods known to the skilled artisan, such as monitoring the current being drawn by the appliance, achieves a predictable result, using such element in the controller of Kamon is likely to be obvious.

CONCLUSION

Because Appellants have failed to point to any error in the Examiner's position, we sustain the 35 U.S.C. § 103 rejection with respect to claim 1 and also with respect to claims 2-14, 29-40, 44, and 45, which are not argued separately (App. Br. 4-9).

DECISION

The decision of the Examiner rejecting claims 1-14, 29-40, 44, and 45 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. 1.136(a)(1)(iv).

AFFIRMED

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